NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0017

STATE OF LOUISIANA

VERSUS

DANIEL JAMES MOORE

Judgment Rendered: May 7, 2010

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Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case No. 504062

The Honorable Timothy C. Ellender, Judge Presiding

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Joseph L. Waitz, Jr. **District Attorney** **Ellen Daigle Doskey** **Assistant District Attorney** **Houma, Louisiana**	**Counsel for Appellee** **State of Louisiana**
Bertha M. Hillman **Thibodaux, Louisiana**	**Counsel for Defendant/Appellant** **Daniel James Moore**
Daniel Moore **Cottonport, Louisiana**	**Defendant/Appellant** **In Proper Person**

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BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

GAIDRY, J.

Defendant, Daniel James Moore, was charged by bill of information with one count of first degree robbery (Count One), a violation of La. R.S. 14:64.1, and one count of attempted first degree robbery (Count Two), a violation of La. R.S. 14:27 and 64.1.[1] Defendant pled not guilty to both counts and proceeded to trial before a jury. The jury determined defendant was guilty as charged on Count One, and guilty of the responsive verdict of attempted simple robbery on Count Two.

The trial court sentenced defendant to serve twenty-two years at hard labor without benefit of probation, parole, or suspension of sentence on Count One and three years at hard labor on Count Two. The trial court ordered the sentences to be served concurrently.

Defendant appeals, citing the following as his sole assignment of error:

> There was insufficient evidence to support the conviction of first degree robbery of Whitney National Bank. None of the victims had a reasonable belief that the defendant was armed with a dangerous weapon.

We affirm defendant's convictions and sentences.

FACTS[2]

On January 23, 2008, at approximately 9:30 a.m., Brittany Solet was working as a teller at the drive-through window of the Whitney National Bank located on St. Charles Street in Houma, Louisiana. Crystal Gros, another teller, was assisting a customer at a lobby window. While Gros was attending to that customer, defendant entered the lobby. Solet moved to the lobby window next to Gros and offered to assist defendant. Defendant

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[1] Count One involved the January 23, 2008 robbery at Whitney National Bank and Count Two involved the January 21, 2008 attempted armed robbery at Cato's, both in Houma.

[2] Because defendant's assignment of error only involves Count One, the facts regarding Count Two will be omitted from this opinion.

responded by stating, "This is a robbery." Solet noticed defendant had his hands in his pockets. She asked if he had a bag because she was going to have to walk away from the counter to access her money drawer. Defendant then looked at Gros and stated, "Well, give me her money." At that point, Solet and defendant walked to Gros's window. The previous customer had left and Solet whispered to Gros that a robbery was occurring. Gros was confused, so defendant stated, "This is a robbery, just give me your money."

Gros testified she began giving defendant the loose bills in denominations of $1, $5, $10, and $20 bills, but defendant then demanded, "Give me your large bills and no one gets hurt." Gros then turned over larger denominations from another drawer and gave them to defendant. Defendant stuffed the money under his jacket and walked out. Neither Solet nor Gros ever saw a weapon.

After defendant left, Solet activated the silent alarm. Approximately five minutes later, the police arrived. The law enforcement officers from the Houma Police Department obtained still photographs of defendant from the bank's video-surveillance system. These photographs were used by officers in canvassing the businesses in the vicinity of the bank to determine defendant's whereabouts.

Around 1:00 p.m., the police were contacted by the desk clerk at the Red Carpet Inn, in close proximity to the bank. The clerk reported that a person matching the description of the suspect was at the hotel in Room 262. Several officers of the Houma Police Department arrived at the Red Carpet Inn and made contact with defendant. Defendant was arrested and transported to the police station. In the meantime, the police obtained and executed a search warrant for Room 262. After executing the search

warrant, the police recovered $3,794.00 from underneath a pillow in Room 262.

At the police station, defendant waived his rights and admitted he robbed the bank. Defendant also stated that he gave some of the money to a friend, Santonio Bennelli, to hold for him. The police contacted Bennelli, advised him of the situation, and Bennelli reported to the police station with the money. The police recovered sixteen $100 bills from Bennelli and more cash from defendant's wallet. Out of the $5,745.00 the bank determined was stolen by defendant, the police were able to recover and return $5,514.00.

Defendant did not testify at trial.

SUFFICIENCY OF THE EVIDENCE

In defendant's sole assignment of error, he contends the evidence is insufficient to support his conviction of first degree robbery because none of the victims had a reasonable belief that defendant was armed with a dangerous weapon.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La.Code Crim. P. art. 821(B); *State v. Mussall*, 523 So.2d 1305, 1308-09 (La. 1988). When analyzing circumstantial evidence, La. R.S. 15:438 provides, "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." This statutory test is not a purely separate one from the *Jackson* constitutional sufficiency standard. Ultimately, all evidence, both direct and circumstantial, must be sufficient under *Jackson* to

satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. *State v. Shanks*, 97-1885, pp. 3-4 (La. App. 1st Cir. 6/29/98), 715 So.2d 157, 159.

Louisiana Revised Statutes 14:64.1(A) provides:

> First degree robbery is the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation, when the offender leads the victim to reasonably believe he is armed with a dangerous weapon.

Defendant asserts that the subjective belief enunciated by the statute excludes unreasonable panic reactions by the victim. See *State v. Caples*, 2005-2517, p. 5 (La. App. 1st Cir. 6/9/06), 938 So.2d 147, 151, writ denied, 2006-2466 (La. 4/27/07), 955 So.2d 684. In support of his argument that the State failed to prove the victims possessed a reasonable belief defendant was armed, he points to the testimony by Gros which reflects she never indicated defendant was armed, nor that defendant ever stated he was armed. Rather, defendant points out that Gros testified she merely assumed she might get hurt in interacting with defendant during the robbery.

Defendant also points to the discrepancies between Solet's trial testimony and prior statements to the police. At trial, Solet testified that defendant told her he was armed, although on cross-examination she acknowledged that her initial statement to Officer Brad Cadiere only stated that defendant demanded he be given money "and nobody gets hurt." Defendant argues that although Solet's typed statement that she provided to the police during the investigation reflected defendant indicated he was armed to both her and Gros, at trial, Solet could not recall if at any point during the incident defendant told Gros he was armed. Nevertheless, Solet's testimony was clear that defendant told *her* that he was armed. On cross-examination, she stated "I know he told me he was armed, for sure."

It is not necessary that a defendant actually be armed with a dangerous weapon to be convicted of first degree robbery. Rather, direct testimony by the victim that she believed the defendant was armed, or circumstantial inferences arising from the victim's immediate surrender of her personal possessions in response to the defendant's threats, may support a conviction for first degree robbery. See *State v. Gaines*, 633 So.2d 293, 300 (La. App. 1st Cir. 1993), writ denied, 93-3164 (La. 3/11/94), 634 So.2d 839.

Considering the evidence in the light most favorable to the prosecution, we cannot say the State failed to satisfy this element of its burden of proof. Although neither Gros nor Solet observed defendant with a dangerous weapon, they both heard him make a reference to the prospect of someone getting "hurt" if his demands were not met. Further, the evidence reflects both Solet and Gros took immediate action in complying with defendant's demands. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. *State v. Lofton*, 96-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. Although the jury was aware of the discrepancies in Solet's statements regarding whether defendant indicated he was armed, the jury's conclusion that Solet's belief that defendant was armed based on her actions was reasonable under the circumstances of this case.

This assignment of error is without merit.

DECREE

Defendant's convictions and sentences are affirmed.

AFFIRMED.